

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BOARD OF TRUSTEES OF THE  
LOCALS 302 AND 612 OF THE  
INTERNATIONAL UNION OF  
OPERATING ENGINEERS  
CONSTRUCTION INDUSTRY HEALTH  
AND SECURITY FUND et al.,

CASE NO. 2:22-cv-01166-LK  
ORDER TO SHOW CAUSE

Plaintiffs,

V.

## BARRY CIVIL CONSTRUCTION, INC.,

Defendant.

This matter comes before the Court sua sponte. For the reasons discussed below, the Court orders counsel for Defendant Barry Civil Construction, Inc. (“Barry”) to show cause why he should not be individually sanctioned for violating the Local Civil Rules.

## I. BACKGROUND

Plaintiffs sued Barry on August 22, 2022, alleging that it breached various contracts by failing to timely make employee benefit contributions. Dkt. No. 1.

1           The Court entered a scheduling order on November 28, 2022. Dkt. No. 10. On July 13,  
 2 2023, about half a month prior to the original dispositive motions deadline, the parties filed a  
 3 stipulated motion to continue that deadline, stating that “[t]he parties are engaged in settlement  
 4 negotiations” and “believe a 60-day extension of the dispositive motions deadline . . . would allow  
 5 enough time to finalize settlement.” Dkt. No. 14 at 2. The Court then continued the dispositive  
 6 motions deadline to September 29, 2023. Dkt. No. 15.

7           On that date, Plaintiffs filed a motion for summary judgment. Dkt. No. 16. Instead of filing  
 8 a substantive response to Plaintiff’s motion on the response due date, and despite conceding that  
 9 “it was too late, in accordance with court rules, for defense counsel to withdraw from the case,”  
 10 Barry filed a brief stating that its counsel was “not in the position to file a substantive response”  
 11 to Plaintiffs’ motion because Barry “can no longer afford to pay for the services of its current legal  
 12 counsel.” Dkt. No. 21 at 3. In that response brief, Barry requested an extension of time so it could  
 13 replace its counsel and file a proper response to Plaintiffs’ motion. Dkt. No. 21 at 3–4.<sup>1</sup>

## 14           II. DISCUSSION

15           As Barry’s counsel acknowledges, the Washington Rules of Professional Conduct do not  
 16 permit an attorney to withdraw from representation at any time.<sup>2</sup> Rule 1.16(c) requires lawyers to  
 17 “comply with applicable law requiring notice to or permission of a tribunal when terminating a  
 18 representation” and to “continue representation notwithstanding good cause for terminating the  
 19 representation” when “ordered to do so.” Under the Local Civil Rules, “[n]o attorney shall  
 20 withdraw an appearance in any case, civil or criminal, except by leave of court,” which must be  
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22           <sup>1</sup> “A request for a court order must be made by motion.” Fed. R. Civ. P. 7(b)(1); *see also Sergeant v. Bank of Am., N.A.*, No. C17-5232-BHS, 2018 WL 1427345, at \*1 n.2 (W.D. Wash. Mar. 22, 2018) (“[R]equests for affirmative relief must be made in a motion, not in the response[.]” (citing LCR 7(b)(1), 7(k))).

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 24           <sup>2</sup> Local Civil Rule 83.3(a)(2) requires attorneys appearing in this District to comply with the Washington Rules of Professional Conduct.

1 obtained “by filing a motion or a stipulation and proposed order for withdrawal[.]” LCR 83.2(b)(1).  
 2 Because a business entity “must be represented by counsel,” an attorney for a business entity who  
 3 seeks to withdraw representation must certify to the Court that he has “advised the business entity  
 4 that it is required by law to be represented” by counsel and “failure to obtain a replacement attorney  
 5 by the date the withdrawal is effective may result in the . . . entry of default against the business  
 6 entity as to any claims of other parties.” LCR 83.2(b)(4). Counsel is required to follow these  
 7 procedures even if his client consents to withdrawal. *See Curtis v. Illumination Arts, Inc.*, No. C12-  
 8 0991-JLR, 2013 WL 12107576, at \*2 (W.D. Wash. Oct. 22, 2013). Importantly, unless the  
 9 attorney-client relationship “is terminated as provided in Rule 1.16, a lawyer should carry through  
 10 to conclusion all matters undertaken for a client.” Wash. R. Prof. Conduct 1.3 cmt. 4; *see also In*  
 11 *re Disciplinary Proceeding Against DeRuiz*, 99 P.3d 881, 889 (Wash. 2004) (“A lawyer has a duty  
 12 to carry through to conclusion all matters undertaken for a client, unless the lawyer withdraws.”).  
 13 This is true “despite opposition, obstruction or personal inconvenience to the lawyer.” Wash. R.  
 14 Prof. Conduct 1.3 cmt. 1.

15 The Court has the authority to discipline an attorney who fails to comply with the  
 16 Washington Rules of Professional Conduct, including through the assessment of fines. *See LCR*  
 17 83.3(c)(3), (c)(4)(F)(iii); *see also Mills v. Zeichner*, No. C23-1130-JLR, 2024 WL 37108, at \*4  
 18 (W.D. Wash. Jan. 3, 2024). In addition, an attorney who fails to comply with the Local Civil Rules  
 19 of this Court, who fails to prepare for presentation to the Court, or who needlessly multiplies the  
 20 proceedings in a case may be subject to sanctions as the Court may deem appropriate. LCR 11(c).

21 At the time Barry filed its “response,” Barry’s counsel acknowledged that it was too late  
 22 to withdraw. Dkt. No. 21 at 3. Despite this, he still attempted to withdraw. This was improper for  
 23 at least three reasons. First, he made this request in a response brief, and—as noted above—it is  
 24 procedurally improper to make a request for affirmative relief in this manner. Second, the Local

1 Civil Rules require an attorney seeking to withdraw to file “a motion or a stipulation and proposed  
2 order for withdrawal” containing the required certification, LCR 83.2(b)(1), (4), and Barry’s  
3 counsel filed neither a motion nor a certification, *see generally* Dkt. Nos. 21–22. Third, despite  
4 remaining Barry’s counsel with the attendant responsibilities discussed above, and despite  
5 acknowledging that it was too late for him to withdraw, Dkt. No. 21 at 3, and that it would be  
6 “unfair” for his client to “fac[e] a summary judgment motion without the ability to truly file an  
7 appropriate response,” Dkt. No. 22 at 2–3, Barry’s attorney did not “file a substantive response to  
8 Plaintiff’s Motion for Summary Judgment,” Dkt. No. 21 at 4. *See also Robbins v. Legacy Health*  
9 *Sys., Inc.*, 311 P.3d 96, 102 (Wash. Ct. App. 2013) (“an attorney may ethically withdraw” (with  
10 leave of court) “if the client will not be hurt”).

11 Finally, even if the Court were to entertain counsel’s procedurally improper request to  
12 continue the “motion, and the trial date,” Dkt. No. 21 at 3–4<sup>3</sup>—made well after the dispositive  
13 motions deadline and without any attempt to show excusable neglect—it would disrupt the Court’s  
14 calendar, require new rounds of briefing despite the elapsed deadlines for such briefs, and invite  
15 more motion practice relating to counsel’s withdrawal. *See* LCR 11(c).

### 16 III. CONCLUSION

17 Accordingly, Barry’s counsel is ORDERED TO SHOW CAUSE, within 30 days of the  
18 date of this Order, why he should not be individually sanctioned for failing to comply with the  
19 Local Civil Rules.

20 Dated this 15th day of February, 2024.

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23 Lauren King  
24 United States District Judge

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